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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUL 24 1996

In the Matter of )  
)  
Amendment of Section 73.606(b), )  
Table of Allocations, )  
Television Broadcast Stations )  
(Twentynine Palms, California) )

MM Docket No. \_\_\_\_\_

RM No. \_\_\_\_\_

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: Chief, Allocations Branch, Mass Media Bureau

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**PETITION FOR RULEMAKING**

DESERT 31 TELEVISION, INC. ("Desert 31"), permittee of Television Station KVMD(TV), Channel 31, Twentynine Palms, California, (FCC File No. BPCT-950922KG), by its attorneys, pursuant to Section 1.401(d) of the Commission's Rules, hereby respectfully requests that Section 73.606(b) of the Rules be amended as follows:

Channel No.

Community

Twentynine Palms, California

Delete

31

Add

53

Desert 31 additionally requests the concurrent modification of its construction permit for KVMD(TV) on Channel 31 at Twentynine Palms, California, to specify operation on Channel 53. In support whereof it is shown as follows:

**I. INTRODUCTION**

1. This instant Petition is not within the scope of the Commission's "freeze" Order concerning the Table of Television Allotments in certain areas.<sup>1</sup> As indicated in that Order,

<sup>1</sup> See Order, Mimeo No. 4074 (released July 17, 1987), 52 Fed. Reg. 29346 (July 29, 1987).

CH5

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the freeze will not be applied in particular situations where its application would be unwarranted. Order at 2. The purpose of the freeze is “to preserve sufficient broadcast spectrum to ensure reasonable options relating to spectrum issues for...[advanced television] technologies. [Emphasis added.]” Id. In imposing a freeze, the Commission was clearly concerned that, in certain areas surrounding major markets, it not make new allocations of broadcast spectrum that might otherwise be utilized at some later date by Advanced Television (“ATV”) technologies such as high definition television.

2. Indeed, in discussing the freeze in its Notice of Inquiry concerning advanced television systems (MM Docket No. 87-268), the Commission made clear that its focus is on not making new television allotments or authorizing new stations. In the Notice of Inquiry, the Commission stated that the freeze is on the “acceptance of applications for new TV assignments and petitions for new allotments pending a more complete understanding of the spectrum requirements of improved TV systems.” Notice of Inquiry, 2 FCC Rcd 5125, 5143, n.29 (released August 20, 1987) (emphasis added). Desert 31’s proposal, of course, would not require that any new allocation be made or that any new stations be authorized. Rather, Desert 31 already has a construction permit, and, hence, is not a new station, it simply proposes an exchange of an existing channel on the Table of Allotments for greater spectrum efficiency. Thus, the reason for the freeze and the goal that it contemplates, namely preservation of spectrum, are not applicable here in view of the fact that the Commission’s objectives in imposing the freeze would not be affected in the least by prohibiting consideration for the exchange of channels on the Table of Allotments.

3. Desert 31 is the only party effected by this proposal. Twentynine Palms, California, is a city in the eastern section of the Los Angeles television market.

4. Desert 31's construction permit for KVMD(TV) on Channel 31 specifies a transmitter site in the hills between Joshua Tree and Twentynine Palms, CA. There is little flexibility in the siting of the station. The station is limited to moving across the valley to the south because of a potential short spacing with KMIR-TV, Channel 36 at Palm Springs, California. KVMD(TV) is limited to moving just 7.2 kilometers to the south. Similarly, the station is limited to the west, where the bulk of the population sits because of a short spacing with KVCR-TV, Channel 24 at San Bernardino, California. Currently, KVMD(TV) clears short spacing with KVCR(TV) by only 6.9 kilometers. The nearest Channel 53 assignment is in Fresno, California, which is more than 200 miles away. Channel 53 could meet full mileage spacing requirements with other stations from a variety of transmitter locations in the market, while still meeting full mileage spacing requirements from existing KVMD(TV) site and the city coordinates of Twentynine Palms, California.

5. Thus, modification of channel assignments to channels that would allow every station to operate at maximum facilities is beneficial and fully justifiable. Desert 31 seeks substitution of Channel 53 for Channel 31 at Twentynine Palms, California and the modification of KVMD(TV)'s construction permit to specify operation on Channel 53. As will be seen, the public interest would be served by the implementation of this proposal.

## II. BACKGROUND

6. There is only one television station allocated to Twentynine Palms:

KVMD(TV), Channel 31. Channel 53 can be substituted for Channel 31 at Twentynine Palms, and Channel 53 can be operated from a variety of transmitter locations with no mileage spacing conflicts in accordance with Commission Rules. The attached engineering study prepared by Donald S. Wilson, Director of Engineering of Venture Technologies Group, LLC, Desert 31's consulting engineer, demonstrates the technical feasibility of these channel substitutions.

## III. ADOPTION OF DESERT 31'S PROPOSAL WOULD SERVE THE PUBLIC INTEREST

7. As the Commission has recognized, each allocation proceeding is to be decided upon the relevant facts and circumstances that are present in the individual case before the Commission. In the Matter of Amendment of Section 3.606, (Erie, Pennsylvania et al.), 17 RR 1518(b), 1519 (1958). In this case, as in previous decisions, the substitution of one allotted exchange of an unoccupied and unapplied for reserved UHF channel with another UHF channel is justified because of the many public interest considerations that are present.

8. In In the Matter of Amendment of Section 73.606(b) (Jacksonville and Palatka, Florida), 3 RR 2d (1964), the Commission adopted a proposal that was quite similar to Desert 31's proposal. In that case, Channel 17 was substituted for Channel 36 at Jacksonville, Florida, and the Jacksonville permittee's license was modified to reflect

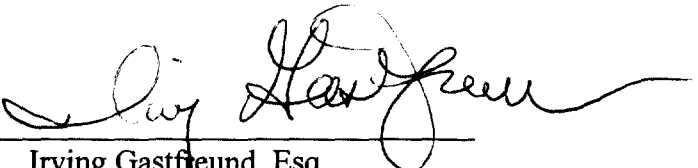
operation on Channel 17 rather than on Channel 36. Channel 36\* was substituted for vacant Channel 17\* at Palatka, Florida. Similarly, In the Matter of Amendment of Section 73.606(b) (Crossville, Tennessee), 47 RR 2d 1285 (Broadcast Bureau, 1980), the noncommercial educational reservation for Crossville, Tennessee, which was unoccupied and unapplied for, was changed from Channel 20\* to Channel 55\* and the Crossville licensee's license was modified to reflect operation on the commercial channel, Channel 20. In the Crossville case, the channel switch and license modification were deemed to be in the public interest because such a change would facilitate a more favorable economic situation for the affected commercial station by making it more competitive. See also In the Matter of Amendment of Section 73.606(b) (Seaford, Delaware), 43 RR 2d 1551 (Broadcast Bureau 1978); In the Matter of Amendment of Section 73.606(b) (Columbus, Mansfield and Newark, Ohio), 21 FCC 2d 145 (1970).

9. In the instant case, the public interest considerations strongly support adoption of Desert 31's proposal. First, the proposed amendment of the Table of Television Allotments would enable a new station, KVMD(TV), which faces difficult obstacles in any event, and which will suffer even more if the Channel 31 allocation is not modified, to achieve signal strength competitive parity with the other commercial stations in the entire market. Second, the proposed channel change would not affect any existing commercial television station's operation since Channel 53 is not currently assigned.

WHEREFORE, the premises considered, Desert 31 respectfully requests that Channel 53 be substituted for Channel 31 at Twentynine Palms, and that the construction permit for KVMD(TV) be modified to specify operation on Channel 53.

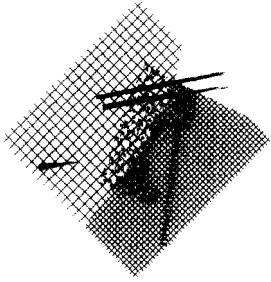
Respectfully submitted,

DESERT 31 TELEVISION, INC.

By   
Irving Gastfreund, Esq.

Kaye, Scholer, Fierman, Hays & Handler, LLP  
901 Fifteenth Street, NW  
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Washington, DC 20005-2327

Date: July 24, 1996



Venture Technologies Group, Inc.

## ENGINEERING STATEMENT OF DONALD S. WILSON

In Support of Petition for Amendment of Section 73.606, Table of Assignments by Desert 31 Television, Inc., July 1996.

### Proposed Reassignment:

Channel 31 from Twentynine Palms, CA – deleted  
Channel 53 to Twentynine Palms, CA – assigned

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This engineering study has been prepared in support of the above-referenced changes in the Table of Television Allotments. The proposed changes appear to be easily accomplished without adversely affecting any existing or potential operation, including designated channels 31 and 53.

As indicated on Tables 1, 2 and 3 of this Engineering Statement, amendment of the Table of Television Allotments as proposed by Desert 31 Television, Inc. ("Desert 31") will eliminate existing technical limits on the proposed use of KVMD, Channel 31 at Twentynine Palms, CA, allowing the station to potentially be operated from transmitter sites serving much greater population centers in the Los Angeles television market.

Table 1: Channel 31 at Existing KVMD Site herein presents a distance separation study for Channel 31 at Twentynine Palms, when location is assumed to be at the existing KVMD transmitter site. Note that from this location, Channel 31 meets all mileage separation requirements, but has little flexibility to move to a better site.

Table 2: Channel 53 at Existing KVMD Site herein presents a distance separation study for Channel 53 at Twentynine Palms, when location is assumed to be at the existing KVMD transmitter site. Note that from this location, Channel 53 meets all mileage separation requirements. Because no applicable mileage separation shows up within 99 kilometers above the minimum mileage spacing requirements, however, there is no station impacted and KVMD would have greater siting flexibility..

The foregoing statement with related data have been prepared by under the direction of Donald S. Wilson, Director of Engineering of Venture Technologies Group, LLC, Los Angeles, California. All representations herein are certified to be true and correct, to the best of my knowledge and information.

Respectfully submitted,

  
Donald S. Wilson

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Date: 9 July 1996

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TABLE 1: CHANNEL 31 AT EXISTING KVMD SITE

\*\*\*\*\* TV CHANNEL SPACING STUDY \*\*\*\*\*

Job title: KVMD 29 PALMS TV SPACING  
Channel: 31  
Database file name: tv960705.edx

Latitude: 34 9 15  
Longitude: 116 11 50

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
36-	KMIRTV	11243	PALM SPRINGS	CA	2	L	214.2	38.6	31.4	7.2
31o	KVMD	11279	TWENTYNINE PALMS	CA	2	C	.0	.0	280.8	-280.8
24-	KVCRTV	11532	SAN BERNARDINO	CA	2	L	258.5	102.6	95.7	6.9

\*\*\*\*\* End of channel 31 study \*\*\*\*\*

TABLE 2: CHANNEL 53 AT EXISTING KVMD SITE

\*\*\*\*\* TV CHANNEL SPACING STUDY \*\*\*\*\*

Job title: KVMD 29 PALMS TV SPACING  
Channel: 53  
Database file name: tv960705.edx

Latitude: 34 9 15  
Longitude: 116 11 50

CH	Call	Record No.	City	ST	Z	STS	Bear.	Dist.	Reqd. Dist.	Result
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\*\*\*\*\* End of channel 53 study \*\*\*\*\*